

STATE OF MISSOURI ex rel. )  
JEREMIAH W. (“JAY”) NIXON, )  
Attorney General, the MISSOURI )  
CLEAN WATER COMMISSION, )  
and the MISSOURI DEPARTMENT )  
OF NATURAL RESOURCES, )

VS. )

MIKE SMETHERS, ANTHONY B. )  
MONSEES, WILLIAM "PAT" MITCHELL, )  
WATER LABORATORY COMPANY, INC., )  
and WEST 16TH STREET SEWER )  
COMPANY, INC. )

### CONSENT JUDGMENT AND ORDER OF INJUNCTION

WHEREAS, Plaintiff, State of Missouri, on behalf of the Missouri Clean Water Commission and the Missouri Department of Natural Resources (“the Department”), filed a petition herein alleging that Defendants, Mike Smethers, Anthony B. Monsees, William “Pat” Mitchell, Water Laboratory Company, Inc. and West 16<sup>th</sup> Street Sewer Company, Inc. violated and continue to violate the Missouri Clean Water Law, Chapter 644, RSMo, and the Missouri State Operating Permit ("MSOP") issued to it by plaintiff, which authorizes discharges of wastewater from its wastewater treatment plant into the unnamed tributary of Coon Creek, waters of the State of Missouri; and

WHEREAS, the plaintiff and defendants Mike Smethers, Anthony B. Monsees, and West 16th Street Sewer Company, Inc. (hereinafter “defendants”) have consented, without trial or adjudication of any issue of fact or law herein, to the entry of this Consent Order;

NOW THEREFORE, it is ORDERED, ADJUDGED and DECREED as follows:

1. The Court has read plaintiff's petition and has been fully advised of its premises. The Court is satisfied that the provisions of this Consent Judgment amicably resolves the issues cognizable under §§ 644.006 to 644.141, RSMo, and the Court finds that this Consent Judgment does protect the public interest.

2. For purposes of this Consent Judgment, this Court has jurisdiction over the subject matter of this action and over the parties consenting hereto pursuant to Chapter 644, RSMo.

3. The Provisions of this Consent Judgment shall apply to and be binding upon the parties executing this Consent Judgment, their officers, agents, successors and assigns.

4. This Consent Order fully resolves the State's and the Department's claims against defendants, its officials, employees and agents, including claims for civil penalties and injunctive relief for violations of the Missouri Clean Water Law at defendants' wastewater treatment facility and as contained in plaintiff's Petition. This Consent Judgment establishes a construction schedule for improvements and/or modifications to the wastewater treatment plant, and establishes penalties due if defendants fail to adhere to said schedule.

#### **CONSTRUCTION SCHEDULE**

5. Defendant shall construct improvements and/or modifications to the wastewater treatment plant so as to assure the facility shall meet all applicable federal effluent limitations for its discharges pursuant to defendants' applicable Missouri State Operating Permit. The below

schedule is based on the amount of time necessary to design and physically construct the improvements and/or modifications to the wastewater treatment plant. The improvements and/or modifications to the wastewater treatment plant required by this Consent Judgment shall be detailed in plans and specifications to be submitted to the Department for approval. The completion of the improvements and/or modifications shall be conducted according to the following schedule:

Activity	Deadline
Submit a complete application for a construction permit, including the appropriate fees	45 days after the entry of this Consent Judgment
Completion of construction	6 months after issuance of the Construction Permit

6. For each day that defendants fails to meet any deadline set forth in the compliance schedule in paragraph 5 above, defendants shall pay according to the following schedule:

- a. Two Hundred Fifty Dollars (\$250.00) per day for the first thirty (30) days;
- b. Five Hundred Dollars (\$500.00) per day after thirty (30) days.

7. In the event that defendants fail to comply with the Construction Schedule outlined in paragraph 5 above, the stipulated penalty shall be immediately due and payable to the “Pettis County Treasurer as Trustee for the Pettis County School Fund” and shall be delivered to Harry D. Bozoian, Assistant Attorney General, P.O. Box 899, Jefferson City, MO 65102.

#### **PENALTY**

8. As and for civil penalties for the violations referred to Plaintiff’s Petition, defendants shall deliver to the Attorney General of the State of Missouri a check made payable to the “Pettis County Treasurer as Trustee for the Pettis County School Fund” in the amount of Thirty-five Thousand Dollars (\$35,000.00), immediately upon entry of this Consent Judgment.

## **COMPLIANCE**

9. Defendants are ordered to comply with the Missouri Clean Water Law and implementing regulations for any and all future operations, including but not limited to, complying with the effluent limitations and conditions contained in its applicable MSOP.

## **GENERAL TERMS**

10. This Consent Judgment is not and shall not be interpreted to be a permit, or modification of existing MSOP or National Pollution Discharge Elimination System (“NPDES”) permits, nor shall it in any way relieve defendants of its obligation to obtain MSOP permits or NPDES permits, and comply with the requirements of its current MSOP and NPDES permits or with any other federal or state law or regulation. Any new permits or modification of existing permits must be complied with in accordance with the applicable federal or state laws and regulations.

11. The Plaintiff does not, by its consent to the entry of this Judgment, warrant or aver in any manner that defendants complete compliance with this Judgment, will result in compliance with the provisions of the Law, or in compliance with a MSOP permit issued to defendants. Defendants shall remain solely responsible for compliance with the terms of this Judgment, and its MSOP permits.

12. Performance of the terms of this Consent Judgment by defendants is not conditioned upon receipt of any federal or state grant funds, nor is it conditional on defendants receipt of monetary loans from Missouri’s State Revolving Fund. In addition, performance is not excused by the unavailability of any federal or state grant funds, nor is performance excused by the unavailability of a monetary loan from Missouri’s State Revolving Fund.

13. Until termination of the provisions of this Consent Judgment, the Department and its agents and attorneys for the State of Missouri shall have authority to enter any facility covered by this Order, at all times, upon proper presentation of credentials to the highest ranking employee present on the premises for the purpose of:

- A. monitoring the progress of activity required by this Judgment;
- B. verifying any data or information submitted to the Department in accordance with the terms of this Judgment, and
- C. obtaining samples, and, upon request, splits of any samples taken by the Defendant or its consultants.

This provision in no way limits, expands or otherwise affects any right of entry held by the Plaintiff pursuant to applicable federal or state laws, regulations or permits.

14. Nothing in this Consent Judgment precludes the State of Missouri from seeking applicable or legal relief for future violations of the Missouri Clean Water Law and regulations.

15. This Consent Judgment only applies to defendants Mike Smethers, Anthony B. Monsees and West 16<sup>th</sup> Street Sewer Company, Inc. This Consent Judgment does not apply to or release defendants William “Pat” Mitchell or Water Laboratory Company, Inc.

16. Each party shall bear its own costs and attorney fees in this action. Defendants shall pay court costs.

17. The Court shall retain jurisdiction to enforce the terms and conditions of this Consent Judgment and to resolve disputes arising hereunder as may be necessary or appropriate.

WE HEREBY CONSENT to the entry of this Judgment:

\_\_\_\_\_  
Date

By:\_\_\_\_\_  
MIKE SMETHERS

\_\_\_\_\_  
Date

By:\_\_\_\_\_  
ANTHONY B. MONSEES

\_\_\_\_\_  
Date

By:\_\_\_\_\_  
WEST 16TH STREET SEWER COMPANY, INC.

JEREMIAH W. ("JAY") NIXON  
Attorney General of Missouri

\_\_\_\_\_  
Date

By:\_\_\_\_\_  
HARRY D. BOZOIAN  
Assistant Attorney General

MISSOURI DEPARTMENT OF  
NATURAL RESOURCES

\_\_\_\_\_  
Date

By:\_\_\_\_\_  
Scott B. Totten, Director  
Water Quality and Soil Conservation Division

IT IS SO ORDERED.

\_\_\_\_\_  
CIRCUIT JUDGE

Dated:\_\_\_\_\_